

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.1297 of 2011

Tmt. Manimegalai

... Petitioner

Vs

- 1.The District Collector,
Perambalur District,
Perambalur.
- 2.The Revenue Divisional Officer,
Perambalur.
- 3.The Tahsildar,
Kunnam Taluk,Perambalur District.
- 4.The President,
Kottarai Village Panchayat,
Kunnam Taluk, Perambalur District.

.... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records pertaining to the orders of the first respondent in Na.Ka.No.A2/14247/2010 dated 07.01.2011 and quash the same.

For Petitioner : Mr.S.Kamadevan

For Respondents : Mrs.K.Bhuvaneswari,
Additional Govt. Pleader for R1 to R3
Mr.V.Arun for R4

O R D E R

The petitioner has approached this Court, seeking the following relief:-

"To issue a Writ of Certiorari, to call for the records pertaining to the orders of the first respondent in Na.Ka.No.A2/14247/2010 dated 07.01.2011 and quash the same."

2. The petitioner was a landless poor and was in possession of Government poramboke land in S.No.299, Kottarai Village,

Kunnam Taluk and Perambalur District for several years. In 2006, a scheme was framed called 'Special Scheme for Assignment to the Landless Agricultural Poor 2006' and a detailed verification was conducted for the purpose of identifying the beneficiaries. On completion of such verification, the third respondent, being the authority assigned an extent of 0.41.5 hectares of land bearing S.No.299/4 in favour of the petitioner. After assigning of the land, the patta was also issued by the third respondent in Patta No.1508 and the petitioner and her family members are in continuous possession of the land without any interference.

3.While the matter stood thus, during the relevant time, one Rajamanickam was elected as the President of the fourth respondent Village Panchayat, who for some reason developed ill will against the petitioner. The said 4th respondent instigated the second respondent to issue notice on 18.09.2008, calling upon the petitioner to submit an explanation stating that the land assigned to her was required for public purpose and for formation of road for the villagers.

4.The petitioner challenged the above notice dated 18.09.2008 in W.P.No.25336 of 2008 and this Court, by order dated 19.12.2008, disposed of the writ petition directing the petitioner to submit explanation and the second respondent to pass orders on considering the representation. While disposing of the writ petition, this Court has observed that the assignment could be cancelled only if it is found that the petitioner violated any of the conditions of the assignment and in the event of land required for public purpose, the action could be initiated against only under the Land Acquisition act. The issues were set at rest then.

5.Thereafter, at the instance of the fourth respondent, the possession of the petitioner was sought to be disturbed. In the said circumstances, the petitioner once again approached this Court in W.P.No.3071 of 2010, seeking to forbear the fourth respondent herein from interfering with the possession and enjoyment of the subject land. Though this Court refused to grant such relief, granted liberty to make complaint to the Superintendent of Police against the illegal action by the fourth respondent or to approach the Civil Court seeking appropriate relief. Thereafter, the complaint was referred before the police authorities and the fourth respondent was summoned and warned. In the mean while, the second respondent dropped further action in pursuance of the notice dated 18.09.2008.

6.While so, at the instance of fourth respondent who has grown more inimical towards the petitioner, caused the official to issue notice to the petitioner on 25.06.2010, seeking

cancellation of assignment of the land on the ground that the petitioner's father-in-law was in possession of lands in S.No.219/10 and 955/6 etc and the petitioner's husband also got share in the property and further, the assignment lands were not cultivated by the petitioner and therefore, the assignment conditions were violated.

7.As against the show cause notice, a reply was submitted by the petitioner on 08.07.2010 to the second respondent and without affording any opportunity to the petitioner in respect of this case, the first respondent passed an order on 07.01.2011, cancelling the assignment of the land issued to the petitioner on the ground that the petitioner's husband had a share in the petitioner's father in law property and the land assigned in favour of the petitioner was not cultivated for the past three fasli years. This order is put to challenge in this writ petition.

8.Upon notice, Mrs.K.Bhuvaneswari, the learned Additional Government Pleader entered appearance on behalf of the respondents 1 to 3 and Mr.V.Arun, the learned counsel entered appearance on behalf of the fourth respondent and filed counter statement.

9.The learned counsel for the petitioner would submit that earlier the reason stated in the show cause notice was that the assigned lands were required for public purpose. This Court, while disposing of the earlier writ petition, has held that only when conditions of the assignment were violated, the assignment could be cancelled and for any lands to be used for public purpose, the authorities could initiate proper action under Land Acquisition Act. Having rendered such finding by this Court in the earlier round of litigation, the respondents changed their stance and now passed the order stating that the conditions of assignment were violated and the petitioner was having excess property through her husband. Such reasons are obviously stated only to overcome the findings in the earlier writ petition.

10.The learned counsel would submit that the order does not disclose that any opportunity was given to the petitioner for explaining the case in person and it also does not disclose whether the explanation submitted by the petitioner was taken into consideration before the order was passed.

11.At this, the learned counsel for the petitioner would submit that already a show cause notice was issued by the authorities on 18.09.2008 and for which, the explanation was given and therefore, no further opportunity was given to the

petitioner. As far as the learned counsel appearing for the respondents 1 to 3 is concerned, she would draw the attention of this Court to paragraph-4 © of the counter affidavit, which is extracted below:-

"c. During Enquiry it came to the knowledge of Revenue Department that on the date of above Assignment to the Petitioner namely 09.12.2006, her husband, her brother-in-law Chinnadurai and father-in-law Duraisamy owned an extent of 12.12.5 Hec. Land in Kottarai Village. In the above total extent the husband of the petitioner is entitled to one sixth (1/6) share to an extent of 2.02.5 Hec. Punjai Lands. However the Petitioner suppressing the fact of the land owned by her husband has obtained the Assignment under "Special Scheme for assignment of Land to Landless Agricultural Poor Families-2006". Furthermore during Enquiry it was found that the Petitioner has not undertaken any cultivation for the past three Fasalies in the assigned Land. Hence it became clear that the Petitioner has violated the conditions NO.1 & 5 of 'D' Namuna."

She would therefore submit that the petitioner violating the conditions of the assignment, cannot complain about the cancellation of the assignment.

12.This Court, after evaluating the submissions of the learned counsel appearing for both parties, is of the considered view that that the impugned order of cancelling the assignment allotted to the petitioner, without affording an opportunity of personal hearing to her, cannot be countenanced in law or on facts.

13.As rightly contended by the learned counsel for the petitioner that though earlier, the reason as set forth in the show cause notice that the lands were required for public purpose, after the order was passed by this Court dated 19.12.2010 in W.P.No.25336 of 2008, the authorities have changed the reasons and have come up with new reason that the petitioner has violated the conditions of the assignment. These subsequent reasons raise strong suspicion as to genuineness of the objections raised by the authorities concerned, which led to the cancellation of the assignment.

14.More over, as rightly contended by the learned counsel for the petitioner, the impugned order does not disclose any

opportunity being given to the petitioner before such cancellation was ordered. It is seen that neither representation was shown to be considered nor any reference of personal hearing of the petitioner was drawn before passing the order by the first respondent. That being the case, this Court is of the considered view that the impugned proceedings is liable to be interfered with on the limited ground that the petitioner was not given reasonable opportunity. In the absence of such opportunity being afforded to the petitioner, the impugned proceedings cannot be allowed to stand.

15. In the above said reasons, this Court, without expressing any opinion on the merits and demerits of the case, sets aside the impugned proceedings of the first respondent in Na.Ka.No.A2/14247/2010, dated 07.01.2011 and directs the first respondent to conduct an enquiry afresh by calling for explanation from the petitioner and also give an opportunity of personal hearing and pass considered order on merits and in accordance with law. The first respondent is directed to comply with the direction within a period of twelve weeks from the date of receipt of a copy of this order.

16. With the above direction, this Writ Petition stands disposed of. No costs.

Sd/-
Deputy Registrar

//True copy//

Sub Assistant Registrar

kal

To

1. The District Collector,
Perambalur District,
Perambalur.
2. The Revenue Divisional Officer,
Perambalur.
3. The Tahsildar,
Kunnam Taluk,
Perambalur District.

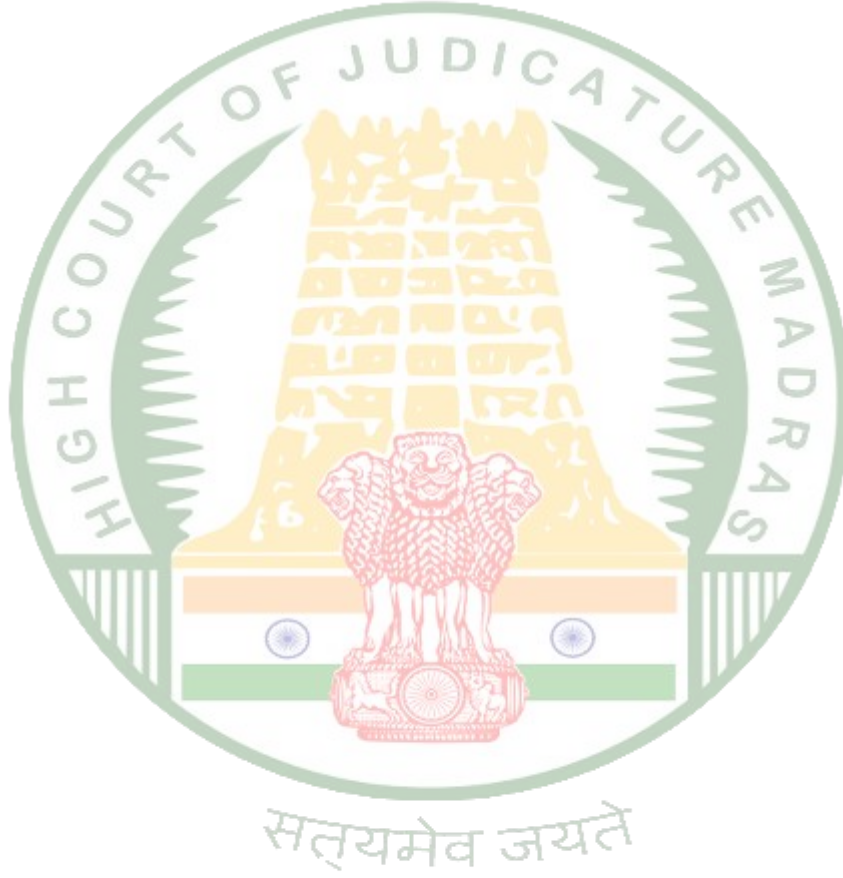
4.The President,
Kottarai Village Panchayat,
Kunnam Taluk,
Perambalur District.

+1cc to Mr.S.Kama devan, Advocate SR.No.14176

+1cc to Government Pleader SR.No.14531

W.P.No.1297 of 2011

GN(20/03/2018)



WEB COPY